

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jerome C. Ruzicka,

Civ. No. 16-cv-00174 (ADM/JSM)

Plaintiff,

v.

Starkey Laboratories, Inc., a corporation,
William Austin, and Brandon Sawalich,

Defendants.

STIPULATION FOR PARTIAL DISMISSAL AND REMAND

WHEREAS, on January 26, 2016, Defendants Starkey Laboratories, Inc., William Austin and Brandon Sawalich (collectively “Starkey”) removed Plaintiff Jerome Ruzicka’s (“Ruzicka’s”) action from the Fourth Judicial District Hennepin County, Minnesota District Court to this Court (ECF Doc. No. 1); and

WHEREAS, removal was premised on the Court’s federal question jurisdiction pursuant to 28 U.S.C. § 1331, because Ruzicka’s Complaint purported to include claims arising under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq*, the exclusive jurisdiction over which lies in the United States District Court pursuant to 29 U.S.C. § 1132(e); and

WHEREAS, on February 3, 2016, and in accordance with L.R. 7.1(a), Starkey’s counsel advised Ruzicka’s counsel that Starkey intended to file a motion to dismiss several of Ruzicka’s claims, including the purported ERISA-based claims on which federal jurisdiction is premised; and

WHEREAS, in accordance with the parties' Joint Stipulation (ECF Doc. No. 3), and to provide Ruzicka with an opportunity to consider whether he would oppose Starkey's motion to dismiss, on February 9, 2016, the Court entered its Order (ECF Doc. No. 4) extending the time in which Starkey must answer or otherwise plead to and including March 15, 2016; and

WHEREAS, Ruzicka agrees that the Court may enter an Order and Judgment dismissing Count IV of his Complaint on the merits and with prejudice, including any and all claims that he has or could have brought under ERISA; and

WHEREAS, the parties agree that, upon dismissal of Ruzicka's purported ERISA claims, this action may be remanded to the Hennepin County, Minnesota Fourth Judicial District Court from which it was removed.

NOW THEREFORE, Ruzicka and Starkey, by and through their respective undersigned counsel, hereby **STIPUTLATE AND AGREE** that:

1. The Court may enter its Order and Judgment dismissing Count IV of the Complaint on the merits and with prejudice, including any and all claims Ruzicka has or could have brought under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*
2. Upon the dismissal of Ruzicka's ERISA-based claims the court may enter its Order remanding this action to the Hennepin County, Minnesota Fourth Judicial District from which it was removed.
3. Either party's counsel may file this Stipulation with the Court using the other counsel's electronic signature; and
4. The Court may issue the Orders referenced above without a hearing.

HELLMUTH & JOHNSON, PLLC

Dated: March 15, 2016

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Dated: March 15, 2016

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